

MAY 23 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THERESA UREKEW,

Plaintiff - Appellant,

v.

TETRA HOLDINGS (US) INC.; KENT
NORRIS; REMY OZARAGA,

Defendants - Appellees.

No. 06-16651

D.C. No. CV-04-02829-FCD/KJM

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted May 16, 2008 **
San Francisco, California

Before: HUG and N.R. SMITH, Circuit Judges, and MILLS ***, District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Richard Mills, Senior District Judge for the Central District of Illinois, sitting by designation.

Theresa Urekew (“Urekew”) appeals the district court’s order entering summary judgment in favor of Tetra Holdings (US), Inc., Kent Norris, and Remy Ozaraga (collectively, “Tetra”). “Summary judgment, a final order over which we take jurisdiction pursuant to 28 U.S.C. § 1291, is reviewed *de novo*, drawing all reasonable inferences supported by the evidence in favor of the non-moving party.” *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 742 (9th Cir. 2004) (internal citations and quotation marks omitted). We also must determine whether the district court properly applied the relevant law. *Lolli v. County of Orange*, 351 F.3d 410, 414 (9th Cir. 2003). We may affirm on any basis supported by the record. *Valdez v. Rosenbaum*, 302 F.3d 1039, 1043 (9th Cir. 2002). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

ERISA preempts Urekew’s three remaining claims for (1) breach of implied contract, (2) breach of the implied covenant of good faith and fair dealing, and (3) intentional infliction of emotional distress. All three claims relate to Tetra’s decision to characterize Urekew’s termination as “for cause” and allege that Tetra made this decision to deprive her of severance benefits. Therefore the claims relate to an administrative decision regarding plan coverage and are preempted by ERISA. *See* 29 U.S.C. § 1144(a); *Campbell v. Aerospace Corp.*, 123 F.3d 1308,

1311 (9th Cir. 1997) (recognizing “that Congress used the words ‘relate to’ in a broad sense”). **AFFIRMED.**